

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

08-CR-6098L

v.

BLAKE FRANCIS,

Defendant.

This Court referred all pretrial matters in this criminal case to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636(b). Defendant Francis is charged in a four-count indictment relating to distribution of marijuana, possession of a firearm in furtherance of that crime, and to related forfeiture counts.

Two motions were submitted to Magistrate Judge Payson for decision. Defendant moved to strike certain language from the indictment as being “unduly prejudicial.” Magistrate Judge Payson considered the matter and determined that there was no such prejudice and that the language referenced was relevant to the crimes charged and, in essence, tracked the applicable statutes. There is no basis here to modify or reverse Magistrate Judge Payson’s determination.

Francis also moved to dismiss Count 1 of the indictment on the grounds that there was insufficient evidence before the grand jury for such a charge. Magistrate Judge Payson set forth the


well-established authority in federal court that an indictment valid on its face is not subject to challenge as being based on inadequate or insufficient evidence. If the proof proves to be inadequate at trial, then defendant has an appropriate remedy at that time.

CONCLUSION

I affirm Magistrate Judge Payson's Decision denying defendant's motion to strike certain language from the indictment.

I accept and adopt Magistrate Judge Payson's Report and Recommendation that I should deny defendant's motion to dismiss the indictment based on insufficiency of the evidence. Therefore, defendant's motion to dismiss Count 1 of the indictment is in all respects denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 25, 2008.